

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1318 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MOHANLAL MORAJI JARIWALA

Versus

STATE OF GUJARAT

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Appearance:

MR PJ VYAS for Petitioner

MR BM MANGUKIYA for Respondent No. 1

MR SA PANDYA Ld. AGP for Respondent No. 2

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 20/04/99

ORAL JUDGEMENT

The petitioner in this petition challenges the impugned orders Annexures A & B passed by the Competent Authority and Deputy Collector, Urban Land, Surat, and Urban Land Tribunal and Secretary, Revenue Department, Ahmedabad in this petition under Article 227 of the Constitution of India.

It is the case of the petitioner that the petitioner and one Milankumar Morarbhai Jariwala Minor by his guardian Morarbhai Makanji Jariwala purchased by registered sale deed dated 13.3.1972 lands survey no. 12-K-1 paiki admeasuring 5953 sq.mts. situated in the sim of village Kapadara, tal. Choryasi, district Surat. The petitioner on coming into operation of the Urban Lands (Ceiling and Regulation) Act, 1976 ( hereinafter referred to as 'the Act'), filed form under sec. 6 of the said Act in the office of the respondent no. 2 on 9.9.1976. In the said form, the petitioner showed two properties held by him and the said Milankumar, namely survey no. 12/k-1 paiki 5953 sq.mts. and a flat in Shrinathaji Society, Haripura, admeasuring 52 sq.mts. Thus, the petitioner showed property held 6065 sq.mts. It is further the case of the case of the petitioner that the entry no. 322 is mutated in the revenue record in the name of the said two persons, namely, the petitioner and minor Milankumar by his guardian Morarbhai Makanji Jariwala. The said entry is certified. Minor Milankumar attained the age of maturity on 4.6.1975. It is further the case of the petitioner that the lands survey no. 12-k-1 paiki came to be held by the petitioner and the said Milankumar as co-owners and on the said Milankumar attaining th age of maturity the name of the guardian was deleted in the revenue record. The petitioner has further stated that the petitioner and the said Milankumar has 1/2 share in the property admeasuring 5953 sq.mts.

The District Development Officer, Jilla Panchayat, Surat by his order dated 29.9.1972 granted N.A. permission to the petitioner. According to him, the petitioner has put up petrol pump, a residential house and a portion of the land kept for agriculture. In pursuance to the notice dated 28.4.1982 issued by the Competent Authority to the petitioner, the petitioner filed objections on 16.5.1982 stating therein that the petitioner is not holding excess vacant land having regard to the construction of the petrol pump, residential house and also having regard to the high tension line passing from the land, are required to leave 50' lands frompassing of the High tension lines. The competent authority by his order dated 24.2.1984 held that the petitioner is holding 3076 sq.mts excess vacant land and that the same be acquired from survey no. 12-k-1 paiki. The said order is at Annexure-A to the petition. Against the said order, the petitioner has filed appeal under sec. 33 of the said Act being Appeal No. 753 of 1984 before the Urban Lands Tribunal, at Ahmedabad. The Tribunal by its order dated 29.12.1987

rejected the appeal of the petitioner and directed the respondent no. 2 to issue final statement under sec. 9 of the said Act. The said order is at Annexure-B to the petition. As stated above, both these orders Annexures-A & B are subject matter of the petition.

When the petition came up for hearing, initially the notice was issued on 24.1.1989. On 28.6.1991, this Court admitted the matter by issuing rule and made it returnable on 22.7.1991. Even though there is no order passed by this Court directing the parties to maintain status quo with regard to the land in question, it appears that no proceedings have been initiated by the respondents either in proceeding further with the case or initiating the proceedings of taking the possession of the land in question from the petitioner. In other words, as stated by the petitioner, the possession of the land in question has remained with the petitioner.

During the course of hearing, the learned advocate Mr. Hawa appearing for the petitioner produced the Ordinance issued by the Central Government, published in the Government Gazette to repeal the Urban Land (Ceiling & Regulation) Act, except sections 11, 12, 13 and 14 and, certain exceptions, and the Resolution passed by the Gujarat Lagislative Assembly adopting the Act No. 15 of 1999, passed by the Parliament. Having gone through the said Act, it is clear that the Urban Land ( Ceiling & Regulation ) Act, 1976 is repealed by the Parliament, except the provisions of section 11,12,13 and 14. As far as the case on hand is concerned, the proceedings initiated against the petitioner are up to the stage under section 9, and consequently, no further proceedings thereafter is initiated of under section 10 of taking possession of the land in question. Under section 4 of the repealing Act, all the proceedings including the pending proceedings initiated against the petitioner, are abated. In view of this, the orders Annexures-A & B passed by the respondents have become redundand.

In the result, the petition is accordingly disposed of by declaring the impugned orders Annexures-A & B as void as having abatted. Rule is made absolute accordingly, with no order as to costs.

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